

**CODE OF GOOD ARBITRATION  
PRACTICE FROM THE  
SPANISH ARBITRATION CLUB**



## FOREWORD

The strength of arbitration as a dispute resolution mechanism lies in its ability to take decisions that are considered by the parties to be impartial. To a large extent, this perception of impartiality stems from the proper handling of the arbitration proceeding. In this respect, there is greater likelihood of voluntary compliance with an award if the losing party recognizes that the arbitrators conducted the proceeding with a firm hand and in a neutral way. As the old saying goes, in arbitration, a proceeding is only as good as its arbitrators.

In this process of instilling confidence, the administrative institutions for arbitration (“arbitral institutions”) also have a decisive role to play. Arbitral institutions interact directly with the parties, their representatives and arbitrators on a daily basis with the intention of bringing disputes to an end successfully. If arbitral institutions did not regulate their contacts according to strict ethical and professional standards, the arbitration proceeding could be adversely affected by the existence of doubts as to the neutrality of their actions, e.g. in appointing arbitrators, during proceedings for challenge or even in the selection of the place of arbitration; all are critical moments during an arbitration proceeding.

In view of this clear need, and supported by the prevailing consensus in the Spanish legal community on the necessity to encourage the use of arbitration, the Spanish Arbitration Club (*Club Español del Arbitraje*) hereby presents the first part of the CEA Code of Good Arbitration Practice. The Code comprises various sections, each dealing exclusively with a specific aspect of arbitration practice. Each section contains a non-exhaustive list of recommendations that may become duties for any institutions that choose to adopt them.

The Code is open to all contributions that represent a step towards achieving a body of arbitration best

practices. The aim is therefore to place the emphasis on its clear adaptability to change in the future, which is also part of the reason behind the decision of the SPANISH ARBITRATION CLUB'S ARBITRATION BEST PRACTICES COMMITTEE to set up an internal CONSULTATIVE COMMISSION as a point of reference for all those involved in arbitration.

Section One<sup>1</sup> of the Code, presented next, is addressed to ARBITRAL INSTITUTIONS. It aims to bring together some of the ethical duties and principles that arbitral institutions could observe in order to contribute to strengthening existing confidence in arbitration as an effective alternative to the courts. The success of any arbitral institution relies, to a large extent, on the irreproachable conduct of everyone working on the inside. This is a shared responsibility that can lead to a successful outcome through strict observance of professional conduct rules. We are confident that this first section of the Code will contribute to achieving this goal.

ARBITRATION BEST PRACTICES COMMITTEE  
SPANISH ARBITRATION CLUB  
DECEMBER 2005

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1 The Arbitration Best Practices Committee appointed a panel to draft the first section of the Code of Good Arbitration Practice made up of José Antonio Caínzos, Luis Felipe Castresana, Mercedes Fernández, Vicente Sierra and Miguel Virgós, and chaired by Jesús Remón. The panel's draft was approved by the Club's Management Committee.

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**SECTION ONE**  
**ARBITRAL INSTITUTIONS**



## RECOMMENDATIONS

- I. **QUALITY OF SERVICE.** Arbitral institutions should provide their services in an objective, efficient and responsible way.
- II. **INSTITUTIONAL INDEPENDENCE.** Arbitral institutions should conduct themselves in an independent and neutral fashion in the administration of arbitration proceedings.
- III. **TRANSPARENCY.** Arbitral institutions should provide full and transparent information on the institution, its services and the internal procedures followed in the administration of arbitration proceedings.
- IV. **SPEED.** Arbitral institutions should take steps to expedite the conduct of the cases they administer.
- V. **FLEXIBILITY.** Arbitral institutions should agree to the adaptation of their rules in the cases they administer.
- VI. **OBJECTIVE SELECTION OF ARBITRATORS.** Arbitral institutions should use objective criteria in the selection and appointment of arbitrators.
- VII. **CONFIDENTIALITY.** Arbitral institutions should protect the privacy and confidentiality of the cases they administer.
- VIII. **PROMOTION.** Arbitral institutions should promote arbitration for the resolution of disputes.

# CEA CODE OF GOOD ARBITRATION PRACTICE

## ARBITRAL INSTITUTIONS

### I. QUALITY OF SERVICES

Arbitral institutions should provide their services in a professional, efficient and responsible way.

#### **Duty 1: Rules**

Arbitral institutions should administer their proceedings on the basis of up-to-date rules that are tailored to meet the needs of business and reflect the evolution of arbitration practices<sup>2</sup>.

#### **Duty 2: Self-assessment**

Arbitral institutions should endeavor to review, assess and, if possible, certify from time to time the quality of their internal procedures<sup>3</sup>.

#### **Duty 3: Adoption of best practices**

Arbitral institutions should endeavor to observe best practices in the management of cases entrusted to them, through the voluntary adoption of this Code.

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2 On the basis of this obligation, arbitral institutions should establish working groups to monitor permanently the validity and updating of the rules.

3 The way of doing so will depend on the specific resources and circumstances of each institution and may range from making complaint/feedback forms available, implementing periodic self-assessment mechanisms, to external certification. Arbitral institutions should send the parties and arbitrators involved in proceedings under their administration a questionnaire that allows the latter to evaluate the former's service and identify potential problems or needs.

## II. INSTITUTIONAL INDEPENDENCE

Arbitral institutions should conduct themselves in an independent and neutral fashion in the administration of arbitration proceedings.

### **Duty 4: Advice**

Under no circumstances whatsoever should an arbitral institution offer legal advice on issues that are or may be the subject of an arbitration proceeding administered by that institution<sup>4</sup>. In the same vein, the arbitral institution should not, under any circumstances, make any recommendation on the provision of legal services by specific lawyers or legal firms.

### **Duty 5: Self-appointment**

Arbitral institutions should avoid the appointment as arbitrators of persons holding administration, executive or management positions in the institution, or persons who are members of their governing bodies, unless such persons are appointed by mutual agreement between the parties or the Rules so permit. In these cases, appointments should be limited to the position of sole arbitrator or chairperson of the arbitral tribunal. The same duty should apply to their employees.

### **Duty 6: Conflict of interest**

Arbitral institutions should inform the parties of any situation that may give rise to doubts as to their independence or impartiality.

### **Duty 7: Sources of remuneration**

Arbitral institutions should be responsible for ensuring that, in cases under their administration, none of their personnel receive remuneration or fees of any kind from the parties. This duty includes a prohibition on working for the members of the arbitral tribunal for

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<sup>4</sup> The preparation of reports or opinions should be regarded as legal advice.

additional fees, without the express consent of the parties<sup>5</sup>.

### III. TRANSPARENCY

Arbitral institutions should provide full and transparent information on the institution, its services and the internal procedures followed by the institution in the administration of arbitration proceedings.

#### **Duty 8: Legal regime and funding**

Arbitral institutions should make public information on their legal status, system of internal governance, and their principal sources of funding, including the entities, organizations, enterprises or institutions that sponsor their activities.

#### **Duty 9: Nature and scope of services**

Arbitral institutions should make public the characteristics, nature and scope of their services<sup>6</sup>. This duty includes information on any service specialization in certain sectors or areas of the economy.

#### **Duty 10: Bodies and procedures**

Arbitral institutions should provide information on the bodies and procedures through which they exercise the powers of administration conferred on them by their rules.

#### **Duty 11: List of arbitrators**

If the arbitral institution has a list of arbitrators, it should make public the selection criteria and

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<sup>5</sup> This includes an express prohibition on accepting gifts, gratuities or bonuses, regardless of their nature and/or economic value, from lawyers, arbitrators or any other person related to the conduct of the proceeding.

<sup>6</sup> It is understood that such information should be provided *before* accepting the administration of an arbitration and any omission in this respect would be the responsibility of the arbitral institutions.

procedure established to be admitted to that list<sup>7</sup>.

### **Duty 12: Appointment and removal of arbitrators**

Arbitral institutions should make public the criteria that they follow in the appointment, challenge and removal of arbitrators.

### **Duty 13: Costs of the arbitration**

Arbitral institutions should be duty-bound to make public their fees for administration and (if any) admission, as well as the arbitrators' fees and the costs of other services related to the arbitration proceeding<sup>8</sup>. The fees and costs of arbitral institutions should have regard to the principle of moderation and should vary depending on the quantum and complexity of the cases.

## **IV. SPEED**

Arbitral institutions should take steps to expedite the cases they administer.

### **Duty 14: Time limits**

Arbitral institutions should ensure that the time limits set in their rules are actually met and should endeavor to avoid undue delay<sup>9</sup>.

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7 Notwithstanding the special conditions set forth in the arbitral institution's rules or bylaws, the lists should be open and, provided that the requisite conditions are met, no professional should be refused admission for reasons other than those related to their aptitude, ability and probity to act as an arbitrator.

8 Related services are considered to include, *inter alia*, the use of premises and equipment, the recording of hearings and interpretation services where provided by the institution itself. This information duty includes the duty to give reasonable notice of any variation or modification in the prices of its services. Such modification cannot, in any event, be applied to proceedings that have already commenced.

9 This duty should also have as its goal and limit the parties' best interests. Failure by an appointed arbitrator to perform his duties within a reasonable time constitutes cause for removal.

### **Duty 15: Use of suitable resources**

Arbitral institutions should support the use of the technologies and means of communication that best meet the objective of resolution, within a reasonable time, of the cases administered, and should encourage simultaneous communications between the parties and the arbitral institution.

## **V. FLEXIBILITY**

Arbitral institutions should agree to the adaptation of their rules in the cases they administer.

### **Duty 16: Adaptation of rules**

Where the parties have so agreed, arbitral institutions should allow their rules to be tailored to the circumstances of the case. This flexibility should, at all times, safeguard the effective protection of the parties' rights, including the procedural safeguards of equality, the right to a hearing and a right of reply.

## **VI. OBJECTIVE SELECTION OF ARBITRATORS**

Arbitral institutions should apply objective criteria to the selection and appointment of arbitrators.

### **Duty 17: Paramountcy of the parties' wishes**

Arbitral institutions should respect the wishes of the parties in the constitution of the arbitral tribunal, subject to the limits of the conditions concerning professional qualifications and personal aptitude required by the institution in its appointments<sup>10</sup>.

### **Duty 18: Qualifications of arbitrators**

Arbitral institutions should be duty-bound to ensure that the arbitrators appointed by them have the most appropriate experience and technical and/or

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<sup>10</sup> Arbitral institutions should appoint arbitrators directly, using lists or respecting the parties' appointment, as the case may be.

professional qualifications for resolving the issues in dispute<sup>11</sup>. Experience as an arbitrator should be, in all cases, absolutely necessary to be appointed as a presiding arbitrator or sole arbitrator<sup>12</sup>.

### **Duty 19: Availability of arbitrators**

Arbitral institutions should ensure that the arbitrators they appoint have the necessary time to conclude the arbitration proceeding in due time and to the required standard<sup>13</sup>.

### **Duty 20: Independence and impartiality of arbitrators**

Arbitral institutions should require each arbitrator to make a statement on their independence and impartiality in which they disclose, and undertake to disclose without delay during the proceeding, any circumstance that may give rise to justifiable doubts as to their independence or impartiality from the parties' perspective<sup>14</sup>. Arbitral institutions should make provision in their rules for expeditious challenge proceedings.

### **Duty 21: Discharge of functions**

Arbitral institutions should ensure that arbitrators acting under their rules discharge their functions

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11 The mechanisms and procedures for ensuring compliance with this duty and the parameters used to assess the arbitrators' credentials should be determined by the arbitral institutions themselves.

12 The arbitral institution should have discretion in assessing the experience of a prospective arbitrator to be able to conduct an arbitration in accordance with its rules.

13 The criteria established to assess this point should ensure that arbitrators are materially in a position to examine and assess all the parties' claims in a reasonable way. The institution should, at all times, avoid appointing arbitrators with an excessive workload.

14 The institutions should be responsible for implementing the mechanisms and procedures necessary to provide assurance to the parties that the arbitrators comply with their duty of transparency.

correctly<sup>15</sup>. An arbitrator should be replaced when it is established that there is an obstacle preventing him from complying with his functions or the arbitrator fails to comply with the rules. For that purpose, arbitral institutions should make provision for the appropriate removal procedure in their rules.

## VII. CONFIDENTIALITY

Arbitral institutions should protect the privacy and confidentiality of the cases they administer<sup>16</sup>.

### **Duty 22: Identity of the parties and substance of the dispute**

Arbitral institutions should act with complete discretion as to the identity of the parties and the substance of the disputes they administer<sup>17</sup>.

### **Duty 23: Custody of documentation**

Arbitral institutions should establish mechanisms to safeguard the confidentiality of the documents and information submitted to proceedings.

### **Duty 24: Keeping of case files**

Arbitral institutions should keep documentation from proceedings for a reasonable period of time and, unless the parties request that the documents be returned, at their expense, such documentation should be destroyed after written notice has been given to the parties.

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15 As a consequence of any shortcomings in the proper discharge of their functions, arbitral institutions should, subject to the rules, oppose or reject future appointments.

16 No information should be disclosed without prior written permission from the parties involved.

17 Arbitral institutions may use information on the nature of the cases and the amounts involved for statistical purposes.

**Duty 25: Register and record of awards**

Arbitral institutions should keep a register and record of awards made in proceedings administered by them in a way that ensures their confidentiality<sup>18</sup>.

**Duty 26: Publication of awards**

Unless a party objects, arbitral institutions should contribute to the creation of a body of arbitration case law by publishing important awards made under their rules, once all confidential information has been removed<sup>19</sup>.

**VIII. PROMOTION**

Arbitral institutions should promote arbitration for the resolution of disputes.

**Duty 27: Training**

Arbitral institutions, individually or in conjunction with other institutions, should endeavor to offer permanent training programs that encourage professionalism in arbitration practice.

**Duty 28: Dissemination**

Arbitral institutions have the mission to disseminate knowledge of arbitration as a dispute resolution method and contribute to creating a culture of arbitration, in particular by organizing or participating in courses, conferences and seminars. They should also encourage the publication of articles

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18 This information may only be viewed by the parties or their authorized representatives. Arbitral institutions may allow access to their records for arbitration-related research projects. Such access must be preceded by the execution of a confidentiality agreement on private data and access shall not, under any circumstances, include access to memoranda, notes or submissions filed by the parties during the proceedings.

19 For that purpose, arbitral institutions should, in their rules, provide information on their policy on award publication and should inform parties of their right to object to the publication of awards or decisions handed down in the proceeding.

on arbitration-related topics and should ensure that arbitration features in the media<sup>20</sup>.

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20 The aim of this activity should be to widen the forum for analysis and debate on arbitration to include groups outside the traditional communities of users, and to contribute to disseminating arbitral institutions' schedule of activities and events.

## REFERENCES

This proposal draws on the following documents:

- Statement of Ethical Principles of the American Arbitration Association
- National Arbitration Forum's Arbitration Bill of Rights (with commentary)
- CPR Principles for ADR Provider Organizations
- CPR Model Rule for the lawyer as third-party neutral

In addition, the following sources were consulted:

### A. Rules

- ABA Model Rules of Professional Conduct
- JAMS Arbitrators Ethics Guidelines
- NAF Code of Conduct for Arbitrators
- Swiss Chamber's Code of Ethics of Arbitrators
- IBA International Code of Ethics
- Washington Mediation Association's Standards of Practice for Mediators
- National Mediation Board. Uniform Guidelines for Placement on the National Mediation Board's Roster of Arbitrators
- DC Bar. Comparison Chart on Arbitrator's Standards of Conduct

### B. Articles

- Murray L. Smith, Impartiality of the party appointed arbitrator, *Arbitration International*, Vol. 6, No. 4 (1990).

- Sigfried H. Elsing, Ethical Issues in Litigation Perspective, IBA International Litigation News, Oct. 2004.
- Doak Bishop and Lucy Reed, Practical Guidelines for interviewing, selecting, and challenging party-appointed arbitrators in international commercial arbitration, Arbitration International, Vol. 14, No. 4 (1998).
- Bruce Meyerson and John M. Townsend, Revised Code of Ethics for Commercial Arbitrators Explained, Dispute Resolution Journal, April 2004.
- Otto de Witt, Nathalie Voser and Neomi Rao, Background information on the IBA Guidelines on Conflict of interest in international arbitration, Business Law International, Vol. 5, Issue 3, September 2004.

**SECTION TWO**  
**RULES OF ARBITRATION INSTITUTIONS**



## FOREWORD

The Spanish Arbitration Club devotes Section Two of its Code of Good Arbitration Practice to the rules of arbitral institutions<sup>21</sup>.

Arbitral institutions have a key role to play in the process of instilling confidence, which is crucial for the development of arbitration as a dispute resolution mechanism. Against this backdrop, arbitral rules are essential instruments for the dissemination of guidelines for certainty and to inform potentially interested parties of the characteristics of each institution.

In producing Section Two of the Code, the Spanish Arbitration Club (*Club Español del Arbitraje* or “CEA”) considered it appropriate to make public a number of recommendations aimed at the parties, lawyers and arbitrators, and to make a model set of Rules available to the arbitration community which it believes reflect the prevailing international trends in this area. We are confident that this second section of the Code will contribute to driving forward the development of arbitration.

ARBITRATION BEST PRACTICES COMMITTEE  
SPANISH ARBITRATION CLUB  
OCTOBER 2008

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21 The Arbitration Best Practices Committee appointed a panel to draft Section Two of the Code of Good Arbitration Practice made up of José Antonio Caínzos, Miguel Ángel Fernández-Ballesteros, Julio González Soria, Mercedes Fernández, Miguel Virgós, Pilar Perales Viscasillas and Vicente Sierra, and chaired by Jesús Remón. The panel would like to thank the following persons for their assistance during the drafting process: Elena Gutiérrez, Marco de Benito and Ángel Pérez Pardo, members of CEA-40. The panel's draft was approved by the Club's Management Committee after being reviewed by an *ad hoc* commission made up of José M<sup>a</sup> Alonso, David Arias, Juan Carlos Calvo, Juan Fernández-Armesto, Miguel Ángel Fernández-Ballesteros and Jesús Remón.

## RECOMMENDATIONS

### I. THE ARBITRAL AGREEMENT

1. Where the administration of the arbitration is entrusted to an arbitral institution, the arbitration clause should state that the applicable Court of Arbitration Rules be those in force on the date of commencement of the arbitration, in order to avoid any doubt as to which Rules apply where they have been amended in the period between signature of the arbitration clause and commencement of the proceeding.
2. In all cases, it is advisable to select a country that has ratified the 1958 New York Convention as the place of arbitration.
3. It is also advisable to select an arbitration at law, unless there are special reasons in a particular case that make it advisable to have an arbitration in equity.
4. "Split" clauses (where some aspects of the agreement are submitted to arbitration and others to the courts of the country in question) should be avoided. If they are used, they must clearly establish which aspects are to be submitted to arbitration and which are not.
5. It is highly advisable to establish rules that facilitate communications and notifications, and avoid doubts concerning the calculation of time limits.
6. The arbitration clause should specify expressly whether or not the proceeding is confidential and, as appropriate, the scope of the confidentiality obligation (or for there to be common agreement on this point once the arbitration has commenced).
7. If any of the parties is a public enterprise, it is advisable that it waive any immunity from which it

may benefit.

8. Requirements for or limitations on arbitrators should not be established if they hinder or excessively delay their appointment.

## II. APPOINTMENT OF ARBITRATORS

9. The parties may openly agree on the procedure for the appointment of arbitrators.
10. As a general rule, decisions on disputes should be entrusted to a sole arbitrator, notwithstanding the possibility of appointing an arbitral panel of three arbitrators if the circumstances so advise.
11. As a general rule, notwithstanding the particular circumstances that may be of use in identifying the services offered by certain arbitral institutions, closed lists of arbitrators should not be used. In any event, it is not advisable to require that the arbitrators to be proposed by the parties appear on the Court of Arbitration's list.
12. One possibility that has advantages is for the Court of Arbitration to present the parties with a short list of prospective arbitrators for the appointment of a sole arbitrator or, where appropriate, the chairperson of the arbitral panel.
13. Consideration should be given, in any case, to the possibility of the Court of Arbitration appointing all the arbitrators.
14. As a general rule, where the parties to an arbitration do not share the same nationality, the sole or presiding arbitrator should be of a nationality other than those of the parties.
15. If the claimants or defendants in a multi-party arbitration cannot reach agreement on the appointment of an arbitrator, it is advisable for the

Court of Arbitration itself to appoint the arbitral tribunal.

16. It is good practice for the Court of Arbitration to be able to reject the arbitrators proposed by the parties or appointed by the other arbitrators if, in its opinion, they do not fulfill the necessary requirements of independence or impartiality.
17. The Court of Arbitration and/or arbitrators should always give reasons for its/their decisions where an arbitrator is challenged.
18. It is advisable to publish challenge decisions, provided that the arbitration proceeding has been concluded, there is no confidentiality agreement expressly preventing publication, and the personal data concerning the arbitrators and the parties have been removed.
19. The Court of Arbitration can act as the appointing authority for arbitrators and as the competent authority for decisions on challenges in *ad hoc* arbitrations. So that provision for such functions can be made in arbitration agreements, the Court of Arbitration should already have the appropriate rules in place clearly defining those functions. Such rules can be incorporated into the rules of procedure or published as independent rules.

### III. PROCEDURE

20. The language of the arbitration should be freely agreed on by the parties, and should not be limited to Spanish. Nevertheless, the Court of Arbitration may decide that Spanish be the language of the arbitration in the absence of express agreement.
21. Agreement should be reached on one common language which should, if possible, be neutral, bearing in mind the place of the arbitration, the law applicable to the agreement, the language of the

agreement, the language of the documents and that spoken by the main witnesses, and the availability of arbitrators with fluency in the language to be designated.

22. As an exception, agreement can also be reached on dispensing with the need for documents to be translated into the language of the arbitration. This practice saves time and money, but is only advisable where the documents are written in a language that is commonly spoken in international transactions.
23. Counterclaims are only admissible where the legal relationship in dispute falls within the scope of application of the arbitral agreement and are directed against the claimant alone.
24. Joinder of arbitration proceedings in progress before the same Court of Arbitration should be accepted, provided that it is possible under the applicable arbitration agreements and does not cause detriment to any of the parties, taking account of the stage of the proceedings.
25. Arbitrators should be given the authority to summon other parties at the request of any of the parties already involved in the proceeding.
26. It is good practice to allow the involvement of third parties not considered to be a claimant or defendant if the arbitrators are of the view that their relationship or link to the case makes this advisable and provided that the arbitration clause so permits.
27. In addition, in *ad hoc* international arbitrations, or where agreed by the parties, it is advisable to draw up terms of reference or make a short procedural order. In both cases, a preliminary hearing should be held to determine the essential aspects of the proceeding, either in the presence of the parties

and their representatives or by means, such as videoconferencing, that guarantee proper communication.

#### IV. INTERIM MEASURES

28. The adoption of interim measures should be permitted at any time and the measures need not be *numerus clausus*.

#### V. EVIDENCE

29. It is important to establish the obligation that arbitrators keep information on the type and substance of evidence proposed by the parties confidential.

30. As a general rule, provided that it is relevant and observes the adversarial principle, it is recommended that the submission of documents be allowed in the evidentiary phase, notwithstanding the establishment of such limits as are considered necessary and the need to ensure that a request to submit evidence is not used to delay the proceeding unnecessarily or obtain information that goes beyond the scope of the proceeding. For this purpose, the possibility of submitting new documents at hearings for the taking of statements or in the final phases of the proceeding should be limited, unless it is evidenced that there is just cause or submission of such documents previously was not possible.

31. In international arbitrations, it is recommended that written witness statements be permitted and, in addition, that arbitrators be allowed to call these witnesses to testify orally *ex officio* or at the request of any of the parties.

32. The arbitrators should be allowed to call as many of the witnesses and experts proposed by the parties to testify as is considered appropriate.

## VI. THE AWARD

33. The Court of Arbitration should be able to extend the deadline for making the award if the circumstances of the case so require and provided that the legislation applicable to the arbitration so permits. Nevertheless, it is advisable to avoid excessive use of this power and to inform all parties appearing in the proceeding immediately of any decision that may be made on extension of the deadline.
34. It is recommended that the Rules make provision for criteria on the awarding of costs.
35. The parties should be allowed to waive any appeal against the award where such waiver is permitted by the law of the place of arbitration.
36. The liability of the arbitrators and of the Court of Arbitration should be limited to cases of willful misconduct.
37. The Court of Arbitration should have a register of awards made.
38. The Court of Arbitration should set up and maintain an appropriate system for the custody and retention of the arbitration case file, and return documents submitted by the parties or destroy them, if the parties so agree, once the proceeding has been concluded. It is advisable for the duration of the custody and retention obligation to be provided for in advance.

## VII. CEA MODEL RULES OF ARBITRATION

39. The Spanish Arbitration Club has approved the **Model Rules** attached to Section Two of its Code of Good Arbitration Practice.

# CEA MODEL RULES OF ARBITRATION

## I. GENERAL ISSUES

### 1. Scope of application

These Rules shall apply to arbitrations administered by the Court of *[the arbitral institution involved]*.

### 2. Interpretation

#### 1. In these Rules:

- a) “the Court” means the *[the arbitral institution involved]*;
- b) “arbitrators” means the arbitral tribunal, composed of one or more arbitrators;
- c) references implying the singular include the plural where there are multiple parties;
- d) “arbitration” shall mean the same as “arbitration proceeding”;
- e) “communication” includes any notification, question, letter, memorandum or information directed to any of the parties, arbitrators or the Court;
- f) “contact details” includes domicile, principal residence, establishment, postal address, telephone, fax and e-mail address.

2. The parties shall be deemed to entrust the administration of the arbitration to the Court where the arbitration agreement submits the resolution of their dispute to “the Court”, “the Court Rules”, “the rules of arbitration of the Court” or where any other analogous expression is used by them.

3. Submission to the Rules of Arbitration shall be taken to mean the Rules in force on the date of commencement of the arbitration, unless there

is express agreement that submission be to the Rules in force on the date of the arbitration agreement.

4. References to the “Arbitration Law” shall be taken as references to the applicable arbitration legislation in force on the date of filing the request for arbitration.
5. If the arbitral tribunal has not yet been constituted, the Court, acting *ex officio* or at the request of any of the parties or arbitrators, shall definitively settle any doubts that may arise over the interpretation of these Rules.

### **3. Communications**

1. All communications filed by a party, as well as all documents attached thereto, shall be accompanied by a copy for every other party together with one additional copy for each arbitrator, one for the Court, and one copy in electronic format. The Court may, at the request of either of the parties and in view of the circumstances of the case, waive the requirement for the filing of a copy in electronic format.
2. Each party, in its first submission, must designate an address for communication purposes. All communications to be directed to that party in the course of the arbitration shall be sent to that address.
3. If a party has not designated an address for communication purposes or if no such address is stipulated in the arbitration agreement, communications to that party shall be addressed to its domicile, establishment or principal residence.
4. If, after having made reasonable inquiries, it is not possible to ascertain any of the places to which reference is made in the preceding paragraph,

communications to that party shall be directed to the addressee's last known domicile, principal residence or address.

5. The claimant shall supply the Court with the information set forth in paragraphs 2 and 3 regarding the defendant until such time as the defendant appears as a party or designates an address for communications.
6. Communications may be made by delivery with acknowledgement of receipt, registered mail, courier, facsimile, electronically or by any other means that provides a record of sending and receipt. Electronic communications shall be preferred.
7. A communication shall be deemed to have been received on the date on which it was:
  - a) personally delivered to the addressee;
  - b) delivered to the addressee's domicile, principal residence, establishment or known address;  
or
  - c) attempted to be delivered in accordance with paragraph 4 of this Article.
8. The parties may agree that communications be effected by electronic means only, using the communication platform provided for or established by the Court.

#### **4. Time limits**

1. Unless otherwise provided, where time limits indicated in days start on a particular day, that day shall be excluded from the calculation of the time limit, which shall start to run on the following day.
2. All communications shall be deemed to have been received on the day they were delivered or were

attempted to be delivered in accordance with the preceding paragraph.

3. Non-business days shall be included in the calculation of time limits. However, if the last day of the time limit is a non-business day in the place where the Court is located, the time limit shall be deemed to be extended to the first following business day.
4. The time limits set in these Rules may, depending on the circumstances of the case, be modified (including extension, shortening or suspension) by the Court (until the arbitral tribunal has been constituted) and by the arbitrators (once the arbitral tribunal has been constituted), unless the parties have expressly agreed otherwise.
5. The Court shall, at all times, ensure effective compliance with time limits and endeavor to avoid delays. This aspect shall be taken into account by the arbitrators in deciding on the costs of the arbitration and by the Court in fixing the arbitrators' final fees.

## II. COMMENCEMENT OF THE ARBITRATION

### **5. Request for arbitration**

1. The arbitration proceeding shall commence with the filing of a request for arbitration at the Court, which shall record that date on the register established for that purpose.
2. The request for arbitration shall at least contain the following information:
  - a) full name, address and other relevant identification and contact information for the claimant(s) and the defendant(s). In particular, it shall indicate the addresses to which

communications to all parties must be directed pursuant to Article 3;

- b) full name, address and other relevant identification and contact information for the claimant's representatives in the arbitration;
  - c) a brief description of the dispute;
  - d) the relief sought and, if possible, the amount claimed;
  - e) the legal transaction, instrument or agreement giving rise to the dispute or to which the dispute relates;
  - f) the arbitration agreement referred to;
  - g) a proposal on the number of arbitrators and the language and place of the arbitration in the absence of prior agreement thereon or if these are to be modified; and
  - h) if the arbitration agreement provides for the appointment of a three-member tribunal, the nomination of the arbitrator whom the claimant is entitled to appoint, indicating his full name and contact details and accompanied by the declaration on independence and impartiality referred to in Article 10.
3. The request for arbitration may also contain a reference to the law applicable to the merits of the case.
4. The request for arbitration must be accompanied by at least the following documents:
- a) a copy of the arbitration agreement or of the communications providing a record of such agreement;

- b) as appropriate, a copy of the agreements giving rise to the dispute;
  - c) letter of appointment of the persons who are to represent the claimant in the arbitration, signed by the claimant; and
  - d) proof of payment of the Court's admission and administration fees and, as appropriate, an advance to cover the applicable arbitrators' fees.
5. If the request for arbitration is incomplete, or the required number of copies or attachments has not been supplied, or the Court's admission and administration fees or advance to cover the arbitrators' fees fixed by the Court have not been paid, the Court may fix a time limit for the claimant to rectify the defect or pay the fees or advance. Following rectification of the defect or payment of the fees or advance within the time limit set, the request for arbitration shall be deemed to have been validly filed on the date on which it was initially filed.
6. Following receipt of the request for arbitration together with all the related documents and copies, and rectification of any defects, as appropriate, and payment of the fees and advance required, the Court shall, without delay, send the defendant a copy of the request.

## **6. Answer to the request for arbitration**

- 1. The defendant shall answer the request for arbitration within fifteen days of its receipt.
- 2. The answer to the request for arbitration shall contain at least the following information:
  - a) the defendant's full name, address and other relevant identification and contact information;

in particular, it shall designate the person and address to whom/which the communications to be made in the course of the arbitration shall be sent;

- b) full name, address and other relevant identification and contact information for the defendant's representatives in the arbitration;
  - c) brief submissions on the claimant's description of the dispute;
  - d) its response to the relief sought by the claimant;
  - e) if the defendant objects to the arbitration, its position on the existence, validity or applicability of the arbitration agreement;
  - f) its position on the claimant's proposal on the number of arbitrators and the language and place of the arbitration, in the absence of prior agreement thereon or if these are to be modified;
  - g) if the arbitration agreement provides for the appointment of a three-member tribunal, the nomination of the arbitrator whom the defendant is entitled to appoint, indicating his full name and contact details and accompanied by the declaration on independence and impartiality referred to in Article 10; and
  - h) its position on the law applicable to the merits of the case, if this issue was raised by the claimant.
3. The answer to the request for arbitration must be accompanied by at least the following documents:

- a) letter of appointment of the persons who are to represent the defendant in the arbitration, signed by the defendant; and
  - b) proof of payment of the Court's admission and administration fees and, as appropriate, an advance to cover the applicable arbitrators' fees.
4. Following receipt of the answer to the request for arbitration together with all the related documents and copies, and payment of the fees and advance fixed by the Court, the Court shall, without delay, send a copy to the claimant. The rectification of any defects in the answer shall be governed by the provisions of Article 5(5) of these Rules.
  5. Failure to file the answer to the request for arbitration within the time limit set shall not suspend the proceeding or the appointment of the arbitrators.

## **7. Counterclaim**

1. If the defendant intends to make a counterclaim, it shall give notice thereof in the answer to the request for arbitration.
2. The notice of counterclaim shall contain at least the following information:
  - a) a brief description of the dispute; and
  - b) the relief sought and, if possible, the amount counterclaimed.
3. The counterclaim must be accompanied by, at least, proof of payment of the Court's fees and an advance to cover the arbitrators' fees, in such amount as may be determined by the Court.
4. Notwithstanding the other applicable requirements, a counterclaim shall only be admissible if the legal relationship that forms the subject-matter of the

counterclaim falls within the scope of application of the arbitration agreement.

5. If notice of a counterclaim has been given, the claimant shall file a preliminary answer within ten days of its receipt.
6. The preliminary answer to the notice of counterclaim shall contain at least the following information:
  - a) brief submissions on the counterclaimant's description of the counterclaim;
  - b) its response to the relief sought by the counterclaimant;
  - c) if it objects to the inclusion of the counterclaim in the arbitration proceeding, its position on the applicability of the arbitration agreement to the counterclaim; and
  - d) its position on the law applicable to the merits of the counterclaim, if this issue was raised by the counterclaimant.

#### **8. *Prima facie* review of the existence of an arbitration agreement**

Where the defendant does not file an answer to the request for arbitration, or refuses to submit to arbitration, or raises one or more pleas concerning the existence, validity or scope of the arbitration agreement, the following alternatives may arise:

- a) If the Court considers that there is a *prima facie* case for the possible existence of an arbitration agreement under the Rules, it shall proceed with the arbitration (subject to the reservations on payment of the advance as provided for by these Rules), without prejudice to the admissibility or merits of any pleas that may be raised. In such a case, any decision as to the jurisdiction of

the arbitrators shall be taken by the arbitrators themselves.

- b) If the Court does not discern any *prima facie* case for the possible existence of an arbitration agreement under the Rules, it shall notify the parties that the arbitration cannot proceed.

## 9. Advance to cover costs

1. The Court shall fix the amount of the advance to cover the costs of the arbitration, including any taxes applicable thereto.
2. During the arbitration proceeding, the Court may, acting *ex officio* or at the request of the arbitrators, request additional advances from the parties.
3. Where, as a result of a counterclaim being made or for any other reason, it was necessary to request the parties to pay advances on various occasions, the Court alone shall decide on the allocation of the payments made to the advances.
4. Unless the parties have expressly agreed otherwise, payment of such advances shall be made by the claimant and the defendant in equal shares. If one of the parties does not pay its share, the other party may meet that payment to enable the proceeding to continue and without prejudice to any final apportionment applicable.
5. If, at any time during the arbitration, the required advances are not paid in full, the Court shall immediately inform the parties of this fact so that the other may make the required payment within ten days. If payment is not made within this time limit, the Court shall refuse to administer the arbitration and, in that event, it shall reimburse each party with any remaining sum deposited, net of the appropriate administration expenses.

6. Once the award has been made, the Court shall send the parties a final account of the advances received. The unused balance shall be returned to the parties in the proportion to which each is entitled.

### III. APPOINTMENT OF THE ARBITRATORS

#### **10. Independence and impartiality**

1. Every arbitrator must be and remain independent and impartial during the arbitration and may not engage in personal, professional or commercial dealings with the parties.
2. Before his appointment or confirmation, the person proposed as arbitrator must sign a declaration as to his independence and impartiality and notify the Court in writing of any circumstances that may be deemed material to his appointment and, in particular, any likely to give rise to doubts as to his independence or impartiality. The Court shall serve notice of this document on the parties so that they may make submissions on this issue within ten days.
3. The arbitrator shall immediately notify both the Court and the parties in writing of any circumstances of a similar nature which may arise during the arbitration.
4. Decisions on the appointment, confirmation, challenge or replacement of an arbitrator shall be final.
5. By accepting to serve, the arbitrator agrees to perform his function until the conclusion with diligence and in accordance with these Rules.

## 11. Number of arbitrators and appointment procedure

1. If the parties have not agreed on the number of arbitrators, the Court shall decide whether to appoint a sole arbitrator or a three-member arbitral tribunal, depending on all of the circumstances.
2. As a general rule, the Court shall appoint a sole arbitrator unless the complexity of the case or the amount in dispute justifies the appointment of three arbitrators.
3. Where the parties have agreed or, in the absence of such agreement, where the Court has decided that a sole arbitrator should be appointed, the parties shall be given a joint time limit of twenty days to agree on the appointment. If, on expiry of this time limit, there has been no notification of an appointment by mutual agreement, the Court shall appoint the sole arbitrator within fifteen days thereafter.
4. Where the parties have agreed on the appointment of three arbitrators before commencement of the arbitration, each party shall nominate, either in the request for arbitration or in the answer to the request for arbitration, respectively, one arbitrator. If either of the parties does not nominate the arbitrator to which it is entitled in the above-mentioned pleadings, the appointment shall be made by the Court. The third arbitrator, who shall act as chairperson of the arbitral tribunal, shall be appointed by the other two arbitrators, who will be given a time limit of twenty days in which to make the appointment by mutual agreement. If, on expiry of this time limit, there has been no notification of an appointment by mutual agreement, the Court shall appoint the third arbitrator within fifteen days thereafter.

5. If, in the absence of agreement between the parties, the Court decides that a three-member tribunal should be appointed, the parties shall be given a joint time limit of fifteen days for each of them to nominate the arbitrator to which it is entitled. If, on expiry of this time limit, there has been no notification by a party of its nomination, the Court shall appoint the arbitrator whom that party was entitled to nominate. The third arbitrator shall be appointed in accordance with the preceding paragraph.
6. The arbitrators shall notify their acceptance, as appropriate, within fifteen days of receipt of the notification from the Court of their appointment.

## **12. Confirmation or appointment by the Court**

1. In appointing or confirming an arbitrator, the Court must consider the nature and circumstances of the dispute, the nationality, location and language of the parties, and the availability and ability of that person to conduct the arbitration in accordance with the Rules.
2. The Court shall notify the parties of any circumstances of which it is aware regarding an arbitrator nominated by the parties which may affect his suitability or prevent or seriously hinder him from performing his functions in accordance with the Rules or within the established time limits.
3. The Court shall confirm the arbitrators appointed by the parties or by the other arbitrators unless, in its opinion alone, it considers that the relationship of the person appointed with the dispute, the parties or their lawyers could give rise to doubts as to his suitability, availability, independence or impartiality.

4. If an arbitrator nominated by the parties or the arbitrators is not confirmed by the Court, the nominating party or arbitrators shall be given a further ten days to nominate another arbitrator. If the new arbitrator is not confirmed either, the Court shall proceed to appoint one.
5. In international arbitrations, except where the parties have the same nationality or have otherwise agreed, the sole arbitrator or the chairperson of the arbitral tribunal shall be of a nationality other than those of the parties unless, in the circumstances, the contrary is advisable and neither of the parties objects within the time limit fixed by the Court for that purpose.
6. Where the Court is to appoint the sole arbitrator or the chairperson of the arbitral tribunal, the Court shall provide the parties with a list of at least three candidates and grant them a joint time limit of ten days in which to eliminate the candidate(s) to which they object. The Court shall appoint the arbitrator in question from among the individuals who were not eliminated by the parties and, where this is not possible, at its own discretion.

### **13. Multiple parties**

1. Where there are multiple claimants or defendants, and three arbitrators are to be appointed, the multiple claimants, jointly, shall nominate one arbitrator and the multiple defendants, jointly, shall nominate another arbitrator.
2. In the absence of such joint nomination and of agreement on the method for the constitution of the arbitral tribunal, the Court shall appoint three arbitrators and designate one of them to act as chairperson. The Court shall proceed to appoint the arbitral tribunal in accordance with Article 12.6 above, and shall nominate at least three candidates for each arbitrator.

## **14. Joinder**

1. If a party files a request for arbitration in connection with a legal relationship in respect of which an arbitration proceeding between the same parties is already pending under these Rules, the Court may, at the request of either of the parties and having consulted with both and, as appropriate, with the arbitrators, join the request to the pending proceeding. In doing so, the Court shall take account of, *inter alia*, the nature of the new claims, their relation to the claims filed in the proceeding already commenced and the stage of the proceeding.
2. If the Court decides to join the new request for arbitration to a pending proceeding in which an arbitral tribunal has already been constituted, the parties shall be presumed to have waived the right to which they were entitled to nominate an arbitrator in respect of that new request.
3. The decision of the Court on joinder shall be final.
4. The arbitrators may, at the request of either of the parties and having heard both of them, allow one or more third parties, having given their written consent, to participate as parties in the arbitration. Moreover, insofar as permitted by the arbitration clause, the arbitrators may allow the participation of third parties after reasoned assessment of their relationship to, or links with, the proceeding.

## **15. Challenge of arbitrators**

1. A challenge of an arbitrator, whether for a lack of independence, impartiality or otherwise, shall be made by the submission of a written statement specifying and substantiating the facts on which the challenge is based.

2. The challenge shall be made within fifteen days from receipt of the communication on the appointment or confirmation of the arbitrator, or from the date on which the party became aware of the facts on which the challenge is based, if later.
3. The Court shall serve notice of the written statement on the arbitrator under challenge and the other parties. If, within ten days of notification, the other party or the arbitrator accepts the challenge, the arbitrator under challenge shall cease his duties and another arbitrator shall be appointed in accordance with Article 16 of these Rules on replacement.
4. If neither the arbitrator nor the other party accepts the challenge, this shall be indicated by submitting a written statement to the Court within the same time limit of ten days and having examined, as the case may be, any evidence proposed and admitted, the Court shall make a reasoned decision on the challenge.
5. The costs of the ancillary challenge proceeding shall be met by the party whose challenge was refused if the arbitrators or the Court consider there to have been bad faith or recklessness in the challenge.

## **16. Replacement of arbitrators and effects**

1. An arbitrator shall be replaced upon his death, upon resignation, following a successful challenge or at the request of both parties.
2. An arbitrator shall also be replaced on the initiative of the Court or of the other arbitrators after all parties and the arbitrators have been heard within ten days, where the arbitrator is not fulfilling his functions in accordance with the Rules or within the prescribed time limits or where circumstances exist that seriously hinder such fulfillment.

3. Regardless of the reason requiring a new arbitrator to be appointed, the appointment shall take place according to the rules governing the appointment of the replaced arbitrator. Where applicable, the Court shall fix a time limit to enable the party with entitlement to nominate a new arbitrator to do so. If that party does not nominate a replacement arbitrator within the time limit set, the arbitrator shall be appointed by the Court in accordance with Article 12(6) above.
4. As a general rule, when an arbitrator is to be replaced, the arbitration proceeding shall resume at the stage at which the replaced arbitrator ceased to perform his functions, unless the arbitral tribunal or the Court, in the case of a sole arbitrator, decides otherwise.
5. Once proceedings have been concluded, the Court may decide, in lieu of replacing an arbitrator and once both parties and the arbitrators have been heard within ten days, that the remaining arbitrators shall continue the arbitration.

#### IV. THE ARBITRATION PROCEEDING - GENERAL PROVISIONS

##### **17. Place of the arbitration**

1. The place of arbitration shall be the place where the Court has its seat, unless the parties have otherwise agreed.
2. As a general rule, hearings and meetings shall be held in the place of the arbitration, although the arbitrators may hold meetings, for deliberation or any other purposes, at any location they consider appropriate. They may also, with the parties' consent, hold hearings in places other than the

place of arbitration and this need not involve *per se* a change in the place of the arbitration.

3. The award shall be deemed to be made in the place of the arbitration.

## **18. Language of the arbitration**

1. The language of the arbitration shall be Spanish, unless the parties have otherwise agreed.
2. The arbitral tribunal may order that any of the documents filed during the proceeding in their original language be accompanied by a translation into the language of the arbitration.

## **19. Representation of the parties**

The parties may be represented or advised by persons of their choice. For that purpose, it shall be sufficient for the party to provide, in the relevant written statement, the names of the representatives or advisers, their contact details and the capacity in which they act. In the case of doubt, the arbitral tribunal may require duly authenticated proof of the authority conferred to act as a representative.

## **20. Rules governing the proceeding**

1. As soon as the arbitral tribunal has been formally constituted, provided that the requisite advances have been paid by the parties, the Court shall transmit the file to the arbitrators.
2. Subject to these Rules, the arbitrators may manage the arbitration in such manner as they see fit, at all times observing the principle of equality of the parties and providing each of them with sufficient opportunities to present their case.
3. The parties may, by mutual written agreement, amend the provisions of Title V of these Rules as they see fit and the arbitrators must observe

such amendments and manage the proceeding in accordance with the parties' agreement.

4. Without prejudice to the previous paragraph, the arbitrators shall manage and organize the arbitration proceeding, as appropriate after consulting the parties, using procedural orders.
5. A copy of all communications, written statements and documents submitted by a party to the tribunal shall be simultaneously sent to the other party and to the Court. The same rule shall apply to communications and decisions by the arbitral tribunal addressed to either or both of the parties.
6. All participants in the arbitration proceeding shall act in accordance with the principles of confidentiality and good faith.

## **21. Applicable rules of law**

1. The arbitrators shall decide in accordance with the rules of law selected by the parties or, in the absence thereof, with such rules of law as they see fit.
2. The arbitrators shall only decide in equity, that is, *ex aequo et bono* or as *amiables compositeurs* if expressly authorized to do so by the parties.
3. In any event, the arbitrators shall decide in accordance with the provisions of the agreement and shall take account of the commercial practices applicable to the case.

## **22. Implied waiver of challenge**

Where one party is aware of an infringement of any of these Rules and, nevertheless, continues with the arbitration without promptly reporting that infringement, it shall be deemed to have waived any challenge thereto.

## V. CONDUCT OF THE PROCEEDING

### 23. First procedural order

1. As soon as the arbitrators receive the file from the Court and, in any case, within thirty days of receipt thereof, they shall make a procedural order after consulting the parties to determine at least the following issues:
  - a) the full names of the arbitrators and the parties, and the addresses they have designated for communications during the arbitration;
  - b) the means of communication to be used;
  - c) the language and place of the arbitration;
  - d) the rules of law applicable to the substance of the dispute or, where appropriate, whether it must be resolved in equity; and
  - e) the procedural timetable.
2. The parties authorize the arbitrators to modify the procedural timetable as often and to such extent as they consider necessary, including to extend or suspend, if required, the time periods initially established within the limits fixed in Article 38(2) of these Rules.

### 24. The claim

1. Unless the timetable established provides otherwise, the arbitrators shall give the claimant thirty days to file the claim.
2. In the claim, the claimant shall state the following:
  - a) the specific relief sought;
  - b) the facts and legal grounds on which the relief sought is based; and

- c) a list of the items of evidence it intends to rely on.
3. The claim shall also be accompanied by all documents, witness statements and expert reports intended to be relied on in support of the relief claimed.

## **25. Answer to the claim**

1. The claim shall be served on the other party so that, within the time limit established in the timetable or, in the absence thereof, within thirty days, the other party may file its answer to the claim, which must meet the requirements set forth in the preceding Article in respect of the claim.
2. Failure to answer the claim shall not prevent the arbitration from proceeding normally.

## **26. Counterclaim**

1. In the answer to the claim or in a separate submission, if so provided for and on condition that due notice has been given, the defendant may make a counterclaim, which must meet the requirements set forth in respect of the claim.
2. The counterclaim shall be served on the other party so that, within the time limit established in the timetable or, in the absence thereof, within twenty days, the other party may file its reply to the counterclaim, which must meet the requirements set forth in the previous Article in respect of the claim.

## **27. New claims**

The making of new claims must be authorized by the arbitrators who, in deciding on this point, shall take account of the nature of the new claims, the stage of the proceeding and all other relevant circumstances.

## 28. Other submissions

The arbitrators shall decide whether the parties are required to file other submissions, besides the claim and the answer, such as a reply or rejoinder, and shall fix the time limits for their submission.

## 29. Evidence

1. Once the claim or, as appropriate, the counterclaim has been answered or replied to, the parties shall be given ten days to specify the additional evidence they are to propose in support of the relief claimed. The arbitral tribunal may replace this written procedure with a hearing, which shall take place in any event if the parties so request.
2. Each party shall bear the burden of proof of the facts on which it bases the relief it seeks or its defenses against such relief.
3. It shall be for the arbitrators to decide, by procedural order, on the admissibility, relevancy and utility of the evidence proposed or agreed to *ex officio*.
4. Evidence shall be taken on the basis of the principle that each party is entitled to be informed, with reasonable notice, of the evidence on which the other party bases its arguments.
5. The arbitrators may, at any time in the proceeding, gather documents or other evidence from the parties, which shall be submitted by such time limit as may be determined for that purpose.
6. If an item of evidence is in the possession or under the control of a party that unjustifiably refuses to submit it or provide access thereto, the arbitrators may draw such conclusions as they see fit from that conduct in respect of the subject matter of the evidence.

7. The arbitrators shall be free to assess the evidence, in accordance with the rules on good judgment.

### **30. Hearings**

1. Arbitrators may settle the dispute solely on the basis of the documents and other evidence submitted by the parties, unless either of the parties requests a hearing.
2. When a hearing is to be held, the arbitral tribunal, giving reasonable notice, shall summon the parties to appear on the day and at the place fixed by it.
3. The hearing may take place even if one of the parties, having been summoned with due notice, does not appear and does not show good cause.
4. The arbitral tribunal shall be exclusively in charge of the hearings.
5. Having given due notice and consulted the parties, the arbitrators shall, by way of a procedural order, establish the rules pursuant to which the hearing is to take place, the manner in which witnesses or experts are to be questioned and the order in which they are to be called.
6. Hearings shall be held *in camera* unless the parties agree otherwise.

### **31. Witnesses**

1. For the purposes of these Rules, a person who gives evidence as to his knowledge of any factual issue shall be considered to be a witness, whether or not he is a party to the arbitration.
2. The arbitrators may stipulate that witnesses give evidence in writing, notwithstanding the fact that questioning may also be required to take place before the arbitrators and in the presence

of the parties, orally or by using a means of communication that makes the witness's presence unnecessary. Witness evidence shall be taken orally whenever one of the parties so requires or if the arbitrators so agree.

3. If a witness who has been called to appear at a hearing for questioning does not appear and does not show good cause, the arbitrators may take account of this in their assessment of the evidence and, as appropriate, may regard the written evidence as not having been given if they consider it appropriate in view of the circumstances.
4. The parties may direct such questions as they consider appropriate to the witness, under the supervision of the arbitrators as to relevance and utility. The arbitrators may also question the witness at any time.

## **32. Experts**

1. The arbitrators may, after consulting the parties, appoint one or more experts who must be and remain impartial and independent of the parties during the arbitration, to provide their opinion on specific issues.
2. The arbitrators shall also be authorized to require either of the parties to make available to the experts appointed by the arbitrators any material information or documents, assets or evidence to be examined.
3. The arbitrators shall provide the parties with the report of the expert appointed by the arbitral tribunal so that they may make such submissions on the report as they consider appropriate at the closing submissions stage. The parties shall be entitled to examine any document cited by the expert in his report.

4. Once an expert appointed by a party or by the arbitrators has presented his report, if either of the parties so requests and the arbitrators consider it appropriate, he shall appear at a hearing at which the parties and arbitrators may question him as to the content of his report. If the experts are appointed by the arbitrators, the parties may also call other experts to give evidence on the issues discussed.
5. The experts may be questioned individually or simultaneously, in a confrontational setting, as stipulated by the arbitrators.
6. The fees and expenses of all experts appointed by the arbitral tribunal shall be deemed to be expenses of the arbitration.

### **33. Closing submissions**

1. Once the hearing has been concluded or, in the case of a written proceeding, once the last party pleading has been received, the arbitral tribunal shall, within the time limit established in the timetable or, in the absence thereof, within fifteen days, notify the parties thereof so that they may present their closing submissions.
2. The arbitral tribunal may replace written closing submissions with oral closing speeches to be delivered at a hearing, which shall take place in any event at the request of both parties.

### **34. Challenge to the jurisdiction of the arbitral tribunal**

1. The arbitrators shall be authorized to decide on their own jurisdiction, including on pleas concerning to the existence, validity or scope of the arbitration agreement or any other pleas that, if upheld, prevent consideration of the merits of the case.

2. For this purpose, an arbitration agreement that forms part of a contract shall be regarded as independent of the other contractual clauses. A decision by the arbitral tribunal that the contract is null and void shall not entail *per se* the invalidity of the arbitration agreement.
3. As a general rule, objections to the arbitrators' jurisdiction shall be made in the answer to the request for arbitration or, at the latest, in the answer to the claim or, as appropriate, the reply to the counterclaim and shall not suspend the proceeding.
4. As a general rule, objections to the arbitrators' jurisdiction shall be decided on as a preliminary issue and by means of an award, once both parties have been heard, or in the final award, once proceedings have been closed.

### **35. Default**

1. If the claimant fails to file the claim in time without sufficient cause, the proceeding shall be deemed to be concluded.
2. If the defendant or the claimant against whom a counterclaim has been filed fails to file an answer or reply in time without sufficient cause, the proceeding shall be ordered to proceed.
3. If one of the parties, duly summoned, fails to appear at a hearing without sufficient cause, the arbitrators shall be authorized to proceed with the arbitration.
4. If one of the parties is duly required to file documents and does not do so within the established time limits without sufficient cause, the arbitrators may make the award on the basis of the evidence available.

### **36. Interim measures**

1. Unless the parties have otherwise agreed, the arbitrators may, at the request of either of the parties, order such interim measures as they deem necessary, weighing up the circumstances of the case and, in particular, the appearance of a good right, *periculum in mora* and the potential consequences of ordering or refusing such measures. The measure must be proportionate to the aim pursued and the least onerous possible in order to achieve that aim.
2. The arbitrators may require the applicant to stand sufficient surety, including by way of a secured counter-guarantee in such form as the tribunal may deem sufficient.
3. The arbitrators shall decide on the measures sought after hearing all the parties concerned.
4. A decision ordering interim measures may take the form of a procedural order or, if any of the parties so requests, an award.

### **37. Closing of the proceeding**

The arbitrators shall declare the proceeding closed when they are satisfied that the parties have had a reasonable opportunity to present their case. Thereafter, no further pleading, submission or argument may be made or filed, or evidence produced, unless authorized by the arbitrators by reason of exceptional circumstances.

## **VI. CONCLUSION OF THE PROCEEDING AND RENDERING OF THE AWARD**

### **38. Time limit for making the award**

1. Unless the parties have otherwise agreed, the arbitrators shall decide on the relief sought within

six months of the filing of the answer to the claim or, as appropriate, the reply to the counterclaim.

2. By submitting to these Rules, the parties delegate power to the arbitrators to extend the time limit for making the award by no more than three months to enable them to conclude their assignment satisfactorily. The arbitrators shall ensure that delays do not occur. In any event, the time limit for making the award may be extended by agreement of all the parties.
3. If an arbitrator is replaced in the last month of the time period for making the award, the time limit shall be automatically extended by an additional thirty days. Where the replacement entails the need to repeat any of the steps taken in the proceeding, the time limit for making the award shall automatically be extended beyond the additional thirty days mentioned above by a further thirty days for the purposes of carrying out the steps that must be repeated.

### **39. Form, substance and notification of the award**

1. The arbitrators shall decide the dispute by a single award or as many partial awards as they deem necessary. All awards shall be deemed to be made in the place of the arbitration and on the date stated therein.
2. Where the arbitral tribunal is composed of a panel of arbitrators, the award shall be made by a majority of the arbitrators. If there is no majority, the award shall be made by the chairperson.
3. The award must be in writing and signed by the arbitrators, who may express dissenting opinions. Where the arbitral tribunal is composed of a panel of arbitrators, the signatures of the majority of the arbitrators or, in the absence thereof, the signature of the chairperson shall be sufficient,

provided that reasons are given as to why the other signatures are missing.

4. The award shall state the reasons upon which it is based, unless the parties have otherwise agreed or where the award is by consent.
5. The arbitrators shall decide on the costs of the arbitration in the award. Any decision on costs must state the reasons upon which it is based.
6. Unless the parties have agreed otherwise in writing, as a general rule, the decision on costs shall reflect the success or failure of the respective parties' claims, except where, in view of the circumstances of the case, the arbitrators deem the application of this general rule to be inappropriate.
7. There shall be as many originals of the award made as there are parties to the arbitration and a further original shall be deposited in the filing system established for that purpose by the Court.
8. The award may be recorded in a protocol if either of the parties so requests and all necessary costs associated therewith shall be borne by the requesting party.
9. The arbitrators shall notify the award to the parties through the Court by supplying each party with a signed copy in the form established in Article 3. The same rule shall apply to any correction or clarification of, or supplement to, the award.

#### **40. Award by consent**

If, during the arbitration proceeding, the parties reach an agreement bringing the dispute to an end, whether wholly or partly, the arbitrators shall consider the proceeding closed in respect of the aspects on

which agreement is reached and they shall record this agreement in the form of an award in the terms agreed on by the parties, if requested by both parties and if the arbitrators do not consider there to be any grounds for opposition.

#### **41. Prior scrutiny of the award by the Court**

1. Before signing the award, the arbitrators shall submit it to the Court, which may, within ten days, propose modifications as to its form.
2. The Court may also, without affecting the arbitrators' liberty of decision, draw its attention to points of substance and to the determination and breakdown of costs.
3. Prior scrutiny of the award by the Court does not mean, under any circumstances, that the Court assumes any responsibility for the substance of the award.

#### **42. Correction and clarification of, and supplement to, the award**

1. Within ten days of notification of the award, unless the parties have otherwise agreed, either of them may request the following from the arbitrators:
  - a) correction of any computational, copying or typographical errors or mistakes of a similar nature;
  - b) clarification of a point or of a specific part of the award;
  - c) a supplement to the award in respect of relief sought and not decided on therein.
2. Once the other parties have been heard within ten days, the arbitrators shall duly decide by way of an award within twenty days.

3. Within the time limits set forth in the preceding paragraphs, the arbitrators may, *ex officio*, correct the errors referred to in paragraph 1.a).

#### **43. Validity of the award**

1. The award is binding on the parties. The parties undertake to comply with the award without delay.
2. If it is possible to seek recourse on the merits or on some other aspect of the dispute in the place of the arbitration, the parties shall be deemed to have waived such recourse by submitting to these Rules, insofar as such waiver can legally be made.

#### **44. Other forms of conclusion**

The arbitration proceeding may also conclude in the following ways:

- a) discontinuance by the claimant, unless the defendant objects and the arbitrators recognize that the defendant has a legitimate interest in having the case definitively resolved;
- b) mutual agreement between the parties; or
- c) when, in the arbitrators' opinion, continuance of the proceeding is unnecessary or impossible.

#### **45. Custody and keeping of the arbitration file**

1. The Court shall be responsible for the custody and keeping of the arbitration file, once the award has been made.
2. After one year has elapsed from the rendering of the award, and subject to prior notice having been given to the parties or to their representatives so that they may, within fifteen days, request the breakdown and handover, at their expense, of

the documents submitted by them, the obligation to keep the file and its associated documents shall cease, with the exception of one copy of the award and of the decisions and communications of the Court concerning the proceeding, which shall be kept in the filing system established for that purpose by the Court.

3. For as long as the Court's obligation to look after and keep the arbitration file subsists, either of the parties may request the breakdown and handover, at its expense, of such original documents as it may have submitted.

#### **46. Costs**

1. The costs of the arbitration shall be fixed in the final award and shall include:
  - a) the Court's admission and administration fees, in accordance with Schedule A (Court fees) and, as appropriate, the expenses of renting facilities and equipment for the arbitration;
  - b) the arbitrators' fees and expenses fixed or approved by the Court in accordance with Schedule B (arbitrators' fees and expenses);
  - c) the fees of the experts appointed, as appropriate, by the arbitral tribunal; and
  - d) the reasonable expenses incurred by the parties for their defense in the arbitration.

#### **47. Arbitrators' fees**

1. The Court shall fix the arbitrators' fees in accordance with Schedule B (arbitrators' fees and expenses), taking account of the time spent by the arbitrators and any other relevant circumstances, especially the early conclusion of the arbitration proceeding as a result of agreement between the

parties or any other reason and potential delays in making the award.

2. Any correction or clarification of, or supplement to, the award under Article 42 shall not give rise to any additional fees.

#### **48. Confidentiality**

1. Unless the parties have otherwise agreed, the Court and the arbitrators are obliged to maintain the confidentiality of the arbitration and award.
2. The arbitrators may order such measures as they deem appropriate in order to protect trade or industrial secrets or any other confidential information.
3. The deliberations of the arbitral tribunal are confidential.
4. An award may be published if the following conditions are met:
  - a) the relevant request for publication must be filed at the Court or the Court itself must consider publication to be in the interests of case law;
  - b) all references to the names of the parties and any information from which they may be readily identified must be removed; and
  - c) neither of the parties to the arbitration raises any objection to publication within the time limit fixed for that purpose by the Court.

#### **49. Liability**

Neither the Court nor the arbitrators shall be liable for any act or omission relating to an arbitration administered by the Court, unless willful misconduct has been shown on its part.

## 50. Expedited procedure

1. The parties may agree to the arbitration proceeding being conducted in accordance with the expedited procedure established by this Article, which amends the general regime as follows:
  - a) The Court may shorten the time limits for appointment of the arbitrator.
  - b) If the parties request evidence other than documentary evidence, there shall only be one hearing for the taking of witness and expert evidence, and for closing speeches.
  - c) The arbitrators shall make the award within four months of the filing of the answer to the claim or the reply to the counterclaim. The arbitrators may only extend the time limit for making the award by a further two months.
  - d) A sole arbitrator shall be appointed, unless the arbitration agreement required the appointment of an arbitral tribunal. In the case of a sole arbitrator, the Court shall invite the parties to agree to the appointment.
2. In addition to being agreed to by the parties, the expedited procedure shall also apply, pursuant to a decision by the Court, to all cases in which the total amount of the proceeding (including, as appropriate, the counterclaim) does not exceed one hundred thousand euros or such equivalent amount as may be revised by the Court, provided that there are no circumstances that, in the Court's opinion, make it advisable to use the ordinary procedure. The decision to conduct an arbitration proceeding under the expedited procedure shall be final.

### **Transitional provision**

These Rules shall enter into force on [date] and thereafter supersede the previous Rules. Unless the parties have otherwise agreed, these Rules shall apply to all arbitrations for which a request has been filed on or after the date of entry into force of these Rules.